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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/648,282	08/24/2000	Brent R. Constantz	CORA-011	5591
24353	7590	12/27/2004	EXAMINER	
BOZICEVIC, FIELD & FRANCIS LLP			MAIORINO, ROZ	
1900 UNIVERSITY AVE			ART UNIT	
SUITE 200			PAPER NUMBER	
EAST PALO ALTO, CA 94303			3763	

DATE MAILED: 12/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<p align="center">Office Action Summary</p>	Application No. 09/648,282	Applicant(s) CONSTANTZ ET AL.	
	Examiner Roz Maiorino	Art Unit 3763	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-7,9,12-19,21-29,31 and 39-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-7,9,12-19,21-29,31 and 39-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>11-15</u> . | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
6) <input type="checkbox"/> Other: _____. |
|---|---|

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Species C in the reply filed on 7/8/2004 is acknowledged.

Claim Objections

2. Claims 6, 42 are objected to because of the following informalities: applicant has referred to claim 1 in the body of both claims 6 and 42, its not clear if claims 6 and 42 are dependent on claim 1 (if so reference to claim 1 should be in the preamble) or claim 6 and 42 are independent claims (if so the limitation of claim 1 should be spelled out). Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or
(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

3. Claims 1-2, 6, 16, 21, 31, 37, 42, 45, 46 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent No.6533767 to Johannson et al.

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Johansson teaches a system with a multi-lumen catheter, a fluid delivery system with two fluid reservoirs comprising of dissolution and a dissolution fluid attenuating fluid and negative pressure means sufficient to aspirate. The fluid system comprises of a first and second reservoir, as well as a balloon inflation system and a third lumen in the catheter.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-2, 4, 6-7, 9, 15-19, 21-29, 31, 33-36, 42-45, and 50 rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 6290689 to Delaney et al and further in view of US Patent No. 6533767 to Johansson et al.

Delaney teaches a system with a multi-lumen catheter, a fluid delivery system with two fluid reservoirs comprising of dissolution and a dissolution fluid attenuating fluid and negative pressure means sufficient to aspirate. The fluid system comprises of a first and second reservoir, as well as a balloon inflation system and a third lumen in the catheter. The dissolution fluid is a buffer, which is a pH elevating solution as, and organic matter dissolution is detergent.

However Delaney does not teach the fluid to be delivered to be elected from an organic and inorganic dissolution fluid. Johansson teaches a fluid delivery system with a multi

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lumen catheter , where the fluid to be delivered to be elected from an organic and inorganic dissolution fluid . (Col.4 lines 40-45)

Therefore it would have been an obvious to one having ordinary skill in the art at the time the invention was made to have used organic and inorganic fluids, because the applicant has the exact same apparatus as Delaney however he has elected to use a different fluid to delivery in the body, and Delaney is capable of delivery of any type of fluid and as demonstrated by Johansson its very common and well known in the art to delivery organic and inorganic dissolution fluids. Applicants argument regarding the type of fluid delivery almost goes to the intended use and functional limitation, recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

5. Claims 46, 21 rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No.6471674 to Emig.

Emig teaches a fluid storage means comprising first and second fluid reservoirs. Emig Does not teach a vascular lesion dissolution fluid. However, it would have been obvious

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to one having ordinary skill in the art to have modified the fluid with in the reservoir to allow the physician to use the same device for a different surgical procedure.

6. Claims 1-2, 4,6-7,9, 12-19, 42-45, 47, 50 rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No.6471674 to Emig and further in view of US Patent No.5792157 to Mische.

Emig teaches fluid delivery system 100 with negative pressure means 230, two separate fluid dispensing means 500 and 300, the dispensing means comprises means 320 and 520 for increasing internal pressure of each of the first and second reservoirs.

Emig teaches the invention except for a multi-lumen catheter with a balloon. Emig does discuss a catheter however; it does not describe the details structure of the catheter used. Mische teaches a multi-lumen catheter with a balloon for aspiration and irrigation purpose.

Therefore it would have been an obvious to one having ordinary skill in the art at the time the invention was made to have added a multi-lumen catheter with a balloon to Emig's system, because according to Mische this catheter allows for expansion of the lumen to allow the removal of debris. And since Emig's system is for both irrigation and aspiration it would be obvious to have a catheter with multi-lumens to allow for both aspiration and irrigation.

7. Claims 22, 31-41, 48-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No.6471674 to Emig, in view of US Patent No.5792157 to Mische and further in view of US Patent No.6033392 to Frey et al.

As mentioned above Emig teaches the invention except for a multi-lumen catheter with a balloon and cartridge. Emig does discuss a catheter however; it does not describe the details structure of the catheter used. Mische teaches a multi-lumen catheter with a balloon for aspiration and irrigation purpose. Frey teaches a cartridge for placement of fluid reservoirs.

Therefore it would have been an obvious to one having ordinary skill in the art at the time the invention was made to have added a multi-lumen catheter with a balloon to Emig's system as well as a cartridge because according to Frey adding a cartridge will allow the fluid reservoirs to be in an antibacterial environment.

Response to Arguments

8. Applicant's arguments with respect to claims 1-2, 4, 4-7, 9, 12-19, 21-29, 31, 39-50 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roz Maiorino whose telephone number is 571- 272-4960. The examiner can normally be reached on 9am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 703-308-2698. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RM


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